

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION, : ORDER
Plaintiff, : 19 Civ. 4355 (LGS) (GWG)
-v.- :
COLLECTOR'S COFFEE INC., et al., :
Defendants. :
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GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE

Veronica Kontilai seeks “an Order staying her deposition, until such time as she is medically cleared by her psychiatrist, Dr. Laurence R. Saben, M.D.” (Docket # 443 at 3). As reflected in Qube Films, Ltd. v. Padell, 2015 WL 109628 (S.D.N.Y. Jan. 5, 2015), Kontilai’s burden is to show a “clearly defined, specific and serious injury” that would result from being deposed. Id. at *2 (citation omitted). Kontilai provides a brief note from Dr. Saben stating that she should not be deposed until some future time when her condition is stable.¹ However, the note is entirely conclusory and provides no basis for the psychiatrist’s opinion that the deposition cannot take place now. Kontilai’s memorandum of law speaks of the “risks associated with requiring her to perform” at a deposition “over a protracted period of time” (Docket # 443 at 5). But Dr. Saben never identifies those risks and it is unclear why counsel believes the deposition will occur over a “protracted period of time.” In light of Kontilai’s failure to provide any competent evidence that participating in the deposition will constitute a burden to her (beyond what any person would feel about being deposed), it is unnecessary to consider any prejudice that would result from delaying it.

Accordingly, the motion for a protective order (Docket # 443) is denied. Nonetheless, in an abundance of caution, the Court will direct (1) that the deposition take place by video; (2) that Kontilai not be deposed for more than 3-1/2 hours in one day; and (3) that if more than 3-1/2 hours of questioning is planned, the second deposition day be scheduled for at least 2 business days later. Veronica Kontilai is ordered to appear for her deposition on dates agreed upon by the parties, which shall be no earlier than August 10, 2020. If the parties cannot agree on dates, the

¹ The Court gives no weight to the double hearsay statement in Kontilai’s reply brief that “it was reportedly revealed” that Dr. Saben’s “office” stated that Dr. Saben “expects” that Kontilai could be deposed in 60 days (Docket # 455 at 2). There is no information as to when this conversation took place, who engaged in it, or why the conversation should be deemed a reliable indication of Dr. Saben’s medical opinion.

parties may present their proposals for dates by letter on or before August 3, 2020, and the Court will order the deposition to take place on dates certain.

So Ordered.

Dated: July 23, 2020
New York, New York



GABRIEL W. CORENSTEIN
United States Magistrate Judge